

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|---------------------------|---|--------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CRIMINAL NO. 03-10396-NG |
| |) | |
| KAM WAI CHUI, |) | |
| Defendant. |) | |

**MOTION AND BRIEF OF THE UNITED STATES
FOR ISSUANCE OF A PRELIMINARY ORDER OF FORFEITURE**

The United States, by and through its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby moves that this Court issue a Preliminary Order of Forfeiture in the above-captioned case pursuant to Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982. In support thereof, the United States sets forth the following:

1. On or about December 17, 2003, a federal grand jury sitting in the District of Massachusetts returned a Nine Count Indictment charging defendant Kam Wai Chui, (the "Defendant" or "Chui"), with the following violations: Mail Fraud, in violation of 18 U.S.C. § 1341, and Aiding and Abetting, in violation of 18 U.S.C. § 2 (Counts One through Five); and, Money Laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(1), and Aiding and Abetting, in violation of 18 U.S.C. § 2, (Counts Six through Nine). The Indictment also included a Forfeiture Allegation, charging the Defendant with Criminal Forfeiture, pursuant to 18 U.S.C. § 982.

2. The Forfeiture Allegation of the Indictment sought the forfeiture, as a result of the money laundering offenses alleged in Counts Six through Nine of the Indictment, of any property, real or personal, involved in such offenses, and any property traceable to such property, including without limitation:

- a. all funds credited to Citizens' Bank checking account number XXX-XXX-8373, held in the name of Daniel Chang¹;
- b. all funds credited to Citizens' Bank account number XXX-XXX-4391, held in the name of Daniel Chang²; and
- c. all funds credited to Citizens' Bank account number XXX-XXX-1292, held in the name of Kam Wai Chui³,

(collectively, the "Accounts").

3. Further, and in accordance with the Indictment, if any of the Defendant's assets that are subject to forfeiture, as a result of any act or omission by the Defendant, (a) cannot be located upon the exercise of due diligence; (b) have been transferred or sold to, or deposited with, a third party; (c) have been placed beyond the jurisdiction of the Court; (d) have been substantially diminished in value; or (e) have been commingled with other property which cannot be divided without

¹The balance of this account currently is \$3,300.77.

²The balance of this account currently is \$152.56.

³This account was closed on November 1, 2002, and no money was recovered.

difficulty, the United States is entitled to seek forfeiture of any other property of the Defendant, up to the value of such assets, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982.

4. On or about May 24, 2004, the Defendant pled guilty to all counts of the Indictment without a written plea agreement. According to the charges in the Indictment, the Defendant laundered approximately \$56,000. Therefore, based on the Defendant's conviction on Counts Six through Nine and the Forfeiture Allegation of the Indictment, the United States is now entitled to the forfeiture of all property involved in the offenses, and any property traceable thereto, including all funds on deposit in the Accounts.

5. In addition, and pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982, the United States is entitled to forfeiture of any other property of the Defendant up to the value of the \$56,000 of laundered money, based on the forfeiture allegation of the Indictment, which also sought the forfeiture of substitute assets. The United States has identified certain other bank accounts in connection with this criminal case. The other accounts are described as:

- a. all funds credited to Citizens' Bank account number XXX-XXX-4324, held in the name of Kam Wai Chui⁴; and

⁴The balance of this account currently is \$101.74.

- b. all funds credited to Citizens' Bank account number XXX-XXX-9495, held in the name of Kam Wai Chui⁵;

(collectively, the "Substitute Accounts"). Therefore, the United States is now also entitled to the forfeiture of substitute assets, and seeks an Order forfeiting all funds on deposit in the Substitute Accounts.

6. By virtue of the Defendant's guilty plea and pursuant to 21 U.S.C. § 853(a), as incorporated by 18 U.S.C. § 982, and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States is now entitled to a Preliminary Order of Forfeiture against all property involved in the offenses, and any property traceable thereto, including all funds on deposit in the Accounts, or substitute assets in an amount up to the value of the property subject to forfeiture, as a result of Chui's guilty plea. See Rule 32.2(b)(2); 21 U.S.C. § 853(p); United States v. Candelaria-Silva, 166 F.3d 19, 41 (1st Cir. 1999).

7. In accordance with the provisions of 21 U.S.C. § 853(m), as incorporated by 18 U.S.C. § 982, and Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture, or substitute assets for such property.

8. In the event that properties are identified which are

⁵The balance of this account currently is \$2,262.07.

subject to forfeiture pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982, the United States will seek an amended Order and conduct ancillary proceedings pursuant to 21 U.S.C. § 853(n), as incorporated by 18 U.S.C. § 982, and Rule 32.2(e).

WHEREFORE, the United States respectfully moves that this Court enter a Preliminary Order of Forfeiture against the Accounts and the Substitute Accounts, as well as any and all assets, or substitute assets, subject to forfeiture, as a result of Chui's guilty plea, in the form submitted herewith.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney,

/s/Kristina E. Barclay
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Date: October 26, 2004

CERTIFICATE OF SERVICE

I certify that I have served a true copy of the foregoing upon Mark W. Bennett, Esquire, 487 Adams Street, P.O. Box 509, Milton, Massachusetts 02186, and Robert L. Jubinville, Esquire, 487 Adams Street, Milton, Massachusetts 02186, as counsel for Defendant Kam Wai Chui, by first class mail, postage prepaid.

/s/Kristina E. Barclay
Kristina E. Barclay
Assistant U.S. Attorney

Dated: October 26, 2004